

ASSEMBLY, No. 2836

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 28, 2022

Sponsored by:

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

SYNOPSIS

Requires DEP, DOH, owners or operators of public water systems, and owners or operators of certain buildings to take certain actions to prevent and control cases of Legionnaires' disease.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/28/2022)

1 AN ACT concerning Legionnaires' disease and supplementing
2 P.L.1977, c.224 (C.58:12A-1 et seq.) and Title 26 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. a. Notwithstanding any other provision of law, or rule or
9 regulation adopted pursuant thereto, to the contrary, the owner or
10 operator of a public water system shall:

11 (1) maintain a minimum detectable disinfectant residual of free
12 chlorine of at least 0.3 milligrams per liter in all active parts of the
13 public water system at all times; and

14 (2) conduct disinfectant residual testing at frequent and regular
15 intervals to determine the amount and type of detectable
16 disinfectant residual existing at different points in the public water
17 system.

18 b. (1) If the owner or operator of a public water system
19 repeatedly fails to meet the minimum detectable disinfectant
20 residual of chlorine targets established pursuant to paragraph (1) of
21 subsection a. of this section and the violations are reported to the
22 Department of Environmental Protection, the public water system
23 shall conduct an internal investigation of the violations. If, after the
24 public water system conducts an investigation, subsequent failures
25 to meet the targets are reported, the Department of Environmental
26 Protection shall conduct an investigation of the subsequent
27 violations or, at its discretion, authorize a third-party entity to
28 conduct the investigation.

29 (2) The Department of Environmental Protection shall develop
30 procedures and guidelines regarding the investigation of an owner
31 or operator of a public water system conducted pursuant to
32 paragraph (1) of this subsection, including but not limited, to:

33 (a) the definition of what constitutes a repeated failure to meet
34 the minimum detectable disinfectant residual of chlorine targets;

35 (b) the requirements for reporting violations of the chlorine
36 targets;

37 (c) when to initiate an initial internal investigation of violations
38 of chlorine targets and subsequent investigations;

39 (d) the establishment of penalties for a violation of chlorine
40 targets, if the department determines that a violation has occurred;

41 (e) the development of a notice to inform consumers if a public
42 water system fails to maintain the minimum detectable disinfectant
43 residual of chlorine targets established pursuant to paragraph (1) of
44 subsection a. of this section; and

45 (f) the criteria used by the department to select appropriate third
46 party entities to conduct investigations of additional violations of
47 chlorine targets.

1 c. The Department of Environmental Protection, in consultation
2 with the Department of Health, may adopt rules and regulations
3 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
4 (C.52:14B-1 et seq.), if determined to be appropriate, to require
5 additional disinfectant requirements or testing requirements of
6 public water systems, or to increase the minimum detectable
7 disinfectant residual, in order to minimize the growth and
8 transmission of *Legionella* bacteria, and requirements for the
9 monitoring of public water systems during construction activities
10 that may impact the public water system. The Department of
11 Environmental Protection shall not reduce the minimum detectable
12 disinfectant residual of chlorine targets established pursuant to
13 paragraph (1) of subsection a. of this section.

14 d. The Department of Environmental Protection shall submit an
15 annual report to the Governor and to the Legislature, pursuant to
16 section 2 of P.L.1991, c.164 (C.52:14-19.1), containing its
17 recommendations as to whether the minimum detectable
18 disinfectant residual of chlorine targets established pursuant to
19 paragraph (1) of subsection a. of this section should be increased in
20 order to minimize the growth and transmission of *Legionella*
21 bacteria.

22
23 2. a. The owner or operator of a public water system shall
24 provide a timely written notice, in a form and manner as determined
25 by the Department of Environmental Protection pursuant to
26 subsection c. of this section, to all residential, commercial, and
27 institutional customers and residents served by the public water
28 system and located in an affected area of disruptions in the water
29 distribution system that could result in increased levels of
30 *Legionella* bacteria being present in the public water system.

31 The notice shall include, but need not be limited to:

32 (1) notification that planned construction, maintenance, repair,
33 or replacement of a part of the system may affect *Legionella*
34 bacteria in the water distribution system and temporarily increase
35 the level of *Legionella* bacteria in the public water system;

36 (2) the estimated length of time that the level of *Legionella*
37 bacteria may remain elevated, as determined by the department;

38 (3) general information on the possible sources of *Legionella*
39 bacteria in the public water system, and the health effects of
40 Legionnaires’ disease and related illnesses to at-risk populations;
41 and

42 (4) measures consumers can take to reduce or eliminate exposure
43 to *Legionella* bacteria, including, but not limited to, ensuring hot water
44 heaters are working properly and maintaining a temperature of at least
45 130 degrees Fahrenheit at the water heater outlet, flushing water lines,
46 including the hot water heater drain and external hose connections,
47 during and after completion of construction work, removing and
48 cleaning faucet aerator screens and showerheads, and installing a

1 water filter or water treatment device certified to remove *Legionella*
2 bacteria.

3 b. (1) The owner or operator of a public water system shall
4 provide a written record of a disruption in the water distribution
5 system to the Department of Environmental Protection within 24
6 hours of the occurrence of the disruption in the water distribution
7 system.

8 (2) The Department of Environmental Protection shall establish
9 on its Internet website a publicly accessible database of the records
10 of a disruption in the water distribution system received by the
11 department pursuant to paragraph (1) of this subsection.

12 c. No later than 120 days after the effective date of
13 P.L. , c. (C.) (pending before the Legislature as this bill),
14 the Department of Environmental Protection, in consultation with
15 the Department of Health and the Department of Community
16 Affairs, shall publish a public notice in the New Jersey Register and
17 on its Internet website specifying the form and manner of:

18 (1) the notice required pursuant to subsection a. of this section,
19 the circumstances under which the owner or operator of a public water
20 system is required to provide the notice pursuant to subsection a. of
21 this section, including when a notice is to be provided if the disruption
22 in the water distribution system is related to *Legionella* bacteria in
23 ground water and when the disruption is related to *Legionella* bacteria
24 in surface water, and the specific information to be included in the
25 notice; and

26 (2) the record of a disruption in the water distribution system
27 required pursuant to subsection b. of this section and the specific
28 information to be included in the record.

29 d. If a public water system serves a municipality in which the
30 primary language of 10 percent or more of the residents is a
31 language other than English, the water purveyor shall provide the
32 notice required pursuant to subsection a. of this section in both
33 English and the other language to the residents.

34 e. The owner or operator of a public water system shall not be
35 required to provide the notice required pursuant to subsection a. or
36 b. of this section until the department has published the public
37 notice required pursuant to subsection c. of this section.

38 f. As used in this section, “disruption in the water distribution
39 system” means any disruption to normal water transmission,
40 including, but not limited to: a change in the water treatment
41 process, including temporary changes from a chloramine residual to
42 a free chlorine residual or vice versa; any planned or unplanned
43 event that reduces water delivery pressure below 20 pounds per
44 square inch; a lead service line replacement; a new construction tie-
45 in; a source water change; water treatment plant maintenance or
46 changes; changes in directional water flow; flooding; replacement
47 of valves, hydrants, or meters; pumping failures; pipeline or water
48 main breaks; system repairs; or emergency conditions.

- 1 3. a. For every reported diagnosis of Legionnaires' disease, the
2 Department of Health shall:
- 3 (1) conduct an investigation into the reported case; and
- 4 (2) advise the individual diagnosed with Legionnaires' disease
5 about the availability of testing by the Department of Health of the
6 fixtures and water-using equipment in the individual's residence,
7 locations frequently visited, and places of employment in the 45
8 days immediately prior to the individual's diagnosis. In a manner
9 consistent with the consent provided by the individual diagnosed
10 with Legionnaires' disease or the owner of the property, the
11 Department of Health shall sample and test the fixtures and water-
12 using equipment for the presence of *Legionella* bacteria. Each test
13 shall be conducted by a laboratory certified for this purpose by the
14 Department of Health, and in accordance with the sampling and
15 testing methods established and provided by the department.
- 16 b. The Department of Health shall develop procedures and
17 guidelines regarding the investigation of every reported diagnosis of
18 Legionnaires' disease pursuant to paragraph (1) of subsection a. of
19 this section, including, but not limited to:
- 20 (1) documentation of any disruption in the water distribution
21 system as defined in subsection f. of section 2 of P.L. , c.
22 (C.) (pending before the Legislature as this bill), serving the
23 primary residence or water exposure points frequented by the
24 infected individual in the 45 days preceding infection, that may
25 have caused the release of *Legionella* bacteria into the home or
26 other water exposure point frequented by the infected individual
27 during that period;
- 28 (2) investigation of potential sources of exposure to *Legionella*
29 bacteria from fixtures, water-using equipment, or features at the
30 individual's residence including water exposures external to the
31 residence such as irrigation, hoses, or water-based equipment and
32 devices; and
- 33 (3) investigation of potential sources of exposure to *Legionella*
34 bacteria from other identified water exposure points such as visits to
35 buildings, water features, car washes, irrigation systems, exposure
36 to pressure washing, car windshield fluids, public fountains or
37 toilets, or other aspects of daily travel and activities.
- 38 c. The Department of Health may delegate its responsibilities
39 and duties pursuant to this section as deemed appropriate for
40 administering the testing and investigatory provisions of this section
41 to a local health officer having jurisdiction over the locality in
42 which a patient diagnosed with Legionnaires' disease lives,
43 frequently visits, or is employed.
- 44 d. The Department of Health shall establish on its Internet
45 website a registry accessible to the public of de-identified data
46 related to each case of Legionnaires' disease reported to the
47 department.

1 As used in this subsection, "de-identified data" means
2 information that does not identify an individual and for which there
3 is no reasonable basis to believe that the information can be used to
4 identify an individual, and which meets the requirements for de-
5 identification of protected health information under the "Health
6 Insurance Portability and Accountability Act of 1996," Pub.L.104-
7 191, and any regulations adopted pursuant thereto by the Secretary
8 of the United States Department of Health and Human Services.
9 However, the Commissioner of Health shall make every effort to
10 provide information on the approximate location of a case of
11 Legionnaires' disease to the nearest city block or general
12 neighborhood description.

13
14 4. a. No later than one year after the effective date of
15 P.L. , c. (C.) (pending before the Legislature as this bill),
16 the owner or operator of a building that meets any of the criteria set
17 forth in paragraphs (1) through (5) of this subsection shall
18 implement a water management program to minimize the growth
19 and transmission of *Legionella* bacteria in the building's water
20 system, consistent with the American Society of Heating,
21 Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard
22 188-2018 or comparable standards adopted by a nationally-
23 recognized, accepted, and appropriate organization:

24 (1) a health care facility licensed pursuant to P.L.1971, c.136
25 (C.26:2H-1 et seq.) where patient stays exceed 24 hours;

26 (2) a building containing one or more areas for the purpose of
27 housing or treating occupants receiving treatment for burns,
28 chemotherapy, solid organ transplantation, or bone marrow
29 transplantation;

30 (3) a building containing one or more areas for the purpose of
31 housing or treating occupants that are immunocompromised, at-risk,
32 on medications that weaken the immune system, or have renal
33 disease, diabetes, or chronic lung disease;

34 (4) a building containing a whirlpool; spa; pool; open- or
35 closed-circuit cooling tower or evaporative condenser that provides
36 cooling or refrigeration for a heating, ventilation, air conditioning,
37 or refrigeration system; ornamental fountain; mister; atomizer; air
38 wash; humidifier; or other non-potable water system or device that
39 releases water aerosols in the building or on the property upon
40 which the building is located; and

41 (5) a building that is more than 10 stories high, including any
42 level that is below grade, with a centralized potable water-heater
43 system.

44 b. The owner or operator of a facility or building required to
45 implement a water management program pursuant to this section
46 shall make the water management program available upon request
47 to an employee of the Department of Community Affairs, the
48 Department of Environmental Protection, the Department of Health,

1 or any other department or agency with license or inspection
2 authority for the facility or building.

3 c. When testing for *Legionella* bacteria consistent with a
4 building's water management program pursuant to subsection a. of
5 this section, the testing shall include, but not be limited to,
6 *Legionella Pneumophila*, and be conducted:

7 (1) in a manner consistent with consistent with the American
8 Society of Heating, Refrigeration, and Air Conditioning Engineers
9 (ASHRAE) Standard 188-2018 or comparable standards adopted by
10 a nationally recognized, accepted, and appropriate organization; and

11 (2) by individuals whose qualifications include:

12 (a) certification in accordance with ASSE Series 12000-2018,
13 Professional Qualifications Standards for Infection Control Risk
14 Assessment for all Building Systems, or comparable standards
15 adopted by a nationally recognized, accepted, and appropriate
16 organization; or

17 (b) the completion of continuing education or a training course
18 of no less than four hours concerning testing, handling, and safety
19 precautions related to *Legionella* bacteria offered in the State by a
20 vocational or community college, non-profit organization,
21 professional association, trade association, trade or labor union, or
22 similar organization.

23 d. (1) An owner or operator of a facility or building who fails to
24 implement a water management program or fails to demonstrate
25 compliance with a water management program required pursuant to
26 this section shall be subject to a penalty of not more than \$2,000 for
27 a first violation, and not more than \$5,000 for a second or
28 subsequent violation, except that the owner or operator shall be
29 subject to a penalty of not more than \$10,000 for any violation
30 which causes serious injury or death to any person, to be collected
31 by the State in a civil action by a summary proceeding under the
32 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
33 et seq.). The Superior Court and the municipal court shall have
34 jurisdiction over proceedings for the enforcement of the penalty
35 provided by this section.

36 (2) The Department of Community Affairs, the Department of
37 Environmental Protection, or the Department of Health may
38 institute a civil action for injunctive relief in the Superior Court to
39 enforce the provisions of this section and to prohibit and prevent a
40 violation of this section, and the court may proceed in the action in
41 a summary manner.

42 e. The provisions of this section shall not apply to a residential
43 property with four or less dwelling units.

44
45 5. No later than 180 days after the effective date of P.L. ,
46 c. (C.) (pending before the Legislature as this bill), the
47 Department of Health, in consultation with the Department of
48 Community Affairs, Department of Environmental Protection, and a

1 public stakeholder group that shall be comprised of no more than
2 five public members, including one representative of a public health
3 organization dedicated to eradicating Legionnaires' disease and one
4 representative of an organization representing water purveyors,
5 shall adopt rules and regulations pursuant to the "Administrative
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary
7 to implement the provisions of P.L. , c. (C.) (pending
8 before the Legislature as this bill).

9 The rules and regulations adopted pursuant to this section shall
10 be consistent with the American Society of Heating, Refrigeration, and
11 Air Conditioning Engineers (ASHRAE) Standard 188-2018 or
12 comparable standards adopted by a nationally recognized, accepted,
13 and appropriate organization.

14
15 6. No later than one year after the effective date of
16 P.L. c. (C.) (pending before the Legislature as this bill), and
17 annually thereafter, the Department of Health, in conjunction with
18 the Department of Environmental Protection and the Department of
19 Community Affairs, shall submit a report to the Governor, and,
20 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
21 Legislature, which shall include:

22 a. the number of cases of Legionnaires' disease in the State
23 reported in each of the previous 10 years;

24 b. the number of reported test results received by the
25 Department of Community Affairs, the Department of
26 Environmental Protection, or the Department of Health which
27 indicate the presence of *Legionella* bacteria;

28 c. the number and type of violations of P.L. , c. (C.)
29 (pending before the Legislature as this bill) for which penalties
30 were assessed; and

31 d. recommendations for legislative action as may be necessary
32 to further control *Legionella* bacteria in the public water supply and
33 affected buildings.

34
35 7. The Department of Health shall develop a public awareness
36 campaign and targeted consumer education program to educate
37 consumers, especially vulnerable populations, on the environmental
38 sources of *Legionella* bacteria, the movement of *Legionella* bacteria
39 through water distribution systems, the notification requirements of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 and how the requirements impact consumers, and the methods to
42 control *Legionella* bacteria in a person's home. The public
43 awareness campaign and education program shall include, but not
44 be limited to, information on the relationship between the risks of
45 the proliferation of *Legionella* bacteria and hot water and the
46 temperature requirements for medical devices, expansion tanks, hot
47 tubs, whirlpools, spas, pools, air conditioning, ornamental
48 fountains, or other equipment or device that releases water aerosols

1 in a person's home or on the person's property and the related risks
2 associated with the inhalation by vulnerable populations of water
3 droplets containing *Legionella* bacteria.

4
5 8. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill would require the Department of Environmental
11 Protection (DEP), the Department of Health (DOH), owners or
12 operators of public water systems, and the owners or operators of
13 certain types of buildings to take specified actions to help inform
14 citizens of the State about, and prevent and control cases of,
15 Legionnaires' disease.

16 The bill would require the owner or operator of a public water
17 system to maintain a minimum detectable disinfectant residual of free
18 chlorine of at least 0.3 milligrams per liter in all active parts of the
19 public water system at all times and to conduct disinfectant residual
20 testing at frequent and regular intervals to determine the amount and
21 type of detectable disinfectant residual existing at different points in
22 the public water system. The DEP would be authorized to adopt rules
23 and regulations to require additional disinfectant requirements or
24 testing requirements of public water systems, or to increase the
25 minimum detectable disinfectant residual, in order to minimize the
26 growth and transmission of *Legionella* bacteria.

27 The bill would require the owner or operator of a public water
28 system to provide written notice to its residential, commercial, and
29 institutional customers and to residents located in an affected area of
30 disruptions in the water distribution system that could result in
31 increased levels of *Legionella* bacteria being present in the public
32 water system. The bill would also require the owner or operator of a
33 public water system to provide a written record of a reported
34 disruption in the water distribution system to the DEP within 24 hours
35 of the occurrence of the disruption. The bill would require the DEP to
36 establish on its Internet website a publicly accessible database of the
37 records of a disruption in the water distribution system submitted to
38 the DEP pursuant to the bill. The bill would require the DEP to
39 publish a public notice in the New Jersey Register and on its Internet
40 website specifying the form and manner of the notice and records
41 required by the bill and the specific information to be included in the
42 notice and records.

43 The bill would require the DOH to conduct an investigation into
44 every reported diagnosis of Legionnaires' disease and require the
45 DOH to advise an individual diagnosed with Legionnaires' disease
46 about the availability of testing by the DOH of the fixtures and water-
47 using equipment in the individual's residence, locations frequently
48 visited, and places of employment in the 45 days immediately prior to

1 the individual's diagnosis. The bill would require the DOH to develop
2 procedures and guidelines regarding investigations of reported cases of
3 Legionnaires' disease. The bill would authorize the DOH to delegate
4 certain responsibilities and duties for administering the testing and
5 investigatory provisions of section 3 of the bill to a local health officer
6 having jurisdiction over the locality in which a patient diagnosed with
7 Legionnaires' disease lives, frequently visits, or is employed. The bill
8 would also require the DOH to establish on its Internet website a
9 registry accessible to the public of de-identified data related to each
10 case of Legionnaires' disease reported to the DOH. "De-identified
11 data" is defined in the bill as information that does not identify an
12 individual and for which there is no reasonable basis to believe that the
13 information can be used to identify an individual, and which meets the
14 requirements for de-identification of protected health information
15 under the federal "Health Insurance Portability and Accountability Act
16 of 1996," Pub.L.104-191, and any regulations adopted pursuant.

17 Section 4 of the bill would require the owner or operator of certain
18 types of buildings to implement a water management program to
19 minimize the growth and transmission of *Legionella* bacteria in the
20 building water system. This requirement would apply to:

21 (1) certain health care facilities where patient stays exceed 24
22 hours;

23 (2) buildings containing one or more areas for the purpose of
24 housing or treating occupants receiving treatment for burns,
25 chemotherapy, solid organ transplantation, or bone marrow
26 transplantation;

27 (3) buildings containing one or more areas for the purpose of
28 housing or treating occupants that are immunocompromised, at-risk,
29 on medications that weaken the immune system, or have renal disease,
30 diabetes, or chronic lung disease;

31 (4) buildings containing a whirlpool, spa, pool, open- or closed-
32 circuit cooling tower or evaporative condenser that provides cooling or
33 refrigeration for a heating, ventilation, air conditioning, or
34 refrigeration system, ornamental fountain, mister, atomizer, air wash,
35 humidifier, or other non-potable water system or device that releases
36 water aerosols in the building or on the property upon which the
37 building is located; and

38 (5) buildings that are more than 10 stories high, including any
39 level that is below grade, with a centralized potable water-heater
40 system.

41 The bill requires that testing conducted as part of a building's
42 water management program is to be conducted in a manner consistent
43 with consistent with the American Society of Heating, Refrigeration,
44 and Air Conditioning Engineers (ASHRAE) Standard 188-2018 or
45 comparable standards adopted by a nationally recognized, accepted,
46 and appropriate organization, and specifies the qualifications of
47 individuals who may conduct the required testing.

1 The bill provides for penalties for the owner or operator of a
2 facility or building who fails to implement a water management
3 program or fails to demonstrate compliance with a water management
4 program. A violator would be subject to a penalty of not more than
5 \$2,000 for a first violation, and not more than \$5,000 for a second or
6 subsequent violation, except that an owner or operator would be
7 subject to a penalty of not more than \$10,000 for any violation which
8 causes serious injury or death to any person.

9 The bill would require the DOH, in consultation with the DEP, the
10 DCA, and a public stakeholder group, to adopt rules and regulations as
11 necessary to implement the provisions of the bill. The bill requires
12 that the rules and regulations be consistent with the ASHRAE
13 Standard 188-2018 or comparable standards adopted by a nationally
14 recognized, accepted, and appropriate organization.

15 The bill would require the DOH, in conjunction with the DEP and
16 the DCA, to prepare an annual report including information on
17 reported cases of Legionnaires' disease reported in each of the
18 previous 10 years, test results indicating the presence of Legionella
19 bacteria, and recommendations for such legislative action as may be
20 necessary to further control *Legionella* bacteria in the public water
21 supply and affected buildings.

22 Lastly, the bill would require the DOH to develop a public
23 awareness campaign and targeted consumer education program to
24 educate consumers, especially vulnerable populations, on the
25 environmental sources of *Legionella* bacteria, the movement of
26 *Legionella* bacteria through water distribution systems, the notification
27 requirements required by the bill and how the requirements impact
28 consumers, and on methods to control *Legionella* bacteria in a
29 person's home.